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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,383	11/30/2001	John Alexander Gaskarth	SWH/AVK/P71830US	1257
9809	7590	09/17/2004	EXAMINER	
KEELING HUDSON LLC P.O. BOX 70103 HOUSTON, TX 77270			COLE, ELIZABETH M	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/980,383	GASKARTH, JOHN ALEXANDER	
	Examiner	Art Unit	
	Elizabeth M. Cole	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33,34,36-39 and 41-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-34, 36-39, 41-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 33-54 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not teach the proportions of thermoset and thermoplastic resin which are required in order to form the fluid transfer material and also does not teach the form in which the two types of resin should be, i.e. melted, particulate, fibrous, etc. .

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 33-34, 36-39, 41-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 4217739 to Kallenberg in view of DE 3124531. Kallenberg discloses a drainage material comprising plastic waste formed into threads. The waste is heated to melt part of it in order to partially bond the threads in order to stabilize the material while still leaving voids. The material may further comprise glass fibers, (i.e., the inorganic fibers of claim 38). See abstract. Kallenberg does not disclose that the waste comprises both thermoplastic and thermoset resin, but it is reasonable to presume that plastic waste would comprise both types of plastic. Additionally, the fact that some of the material melts upon heating indicates that some of the material was thermoplastic. Kallenberg does clearly teach employing waste plastic. Therefore, it would have been obvious to have employed both thermoplastic and thermoset plastic as the waste plastic because employing both types would allow for more plastic to be

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recycled and also would enable the drainage material to be bonded by the thermoplastic material while still maintaining structural integrity due to the thermoset plastic. The choice of particular known types of plastics would have been obvious to one of ordinary skill in the art depending upon what materials were available. Kallenberg further teaches the use of the drainage material within a drainage system, such as in combination with a gutter. See fig. 1. Kallenberg does not disclose chopping or shredding the waste plastic. DE '531 teaches that waste plastic for use in drainage mats may be chopped and then fused to form the mat. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the waste plastic material of DE '739 in a chopped form as taught by Kallenberg. One of ordinary skill in the art would have been motivated to include the plastic in chopped form because DE '531 teaches that this is a suitable way of preparing waste plastic for use in drainage mats.

4. Claims 33-34, 36-39, 41-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallenberg in view of GB 2,201,872 to Maynes.

Kallenberg discloses a drainage material as set forth above. Kallenberg differs from the claimed invention because Kallenberg does not teach surrounding the drainage material with a scrim or net or within a porous pipe. Maynes teaches that drainage materials comprising a plurality of plastic spheres having void spaces therebetween may be encased in a net. See page 5, lines 8-17. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have encased the Kallenberg material in a net in order to hold the drainage material of Kallenberg in place.

Applicant's arguments filed 9/2/03 have been fully considered but they are not persuasive. Applicant argues that Kallenberg uses the term plastics and further states

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the plastics is cleaned and that therefore, this would teach that only thermoplastic materials should be employed. However, the term plastic is used for both thermoset and thermoplastic resins. Since Kallenberg teaches using waste plastics it is reasonable to presume that such waste plastics would include both thermoplastic and thermoset resins. Therefore, the rejection has been maintained.

Applicant's arguments regarding the 112 1st paragraph rejection, namely, that the skilled artisan would be able to ascertain the relative proportions of thermoset and thermoplastic resin are persuasive and therefore, this rejection is withdrawn.

Applicant's amendments to the claims have overcome the 112 2nd paragraph rejection by clarifying the claimed structure.

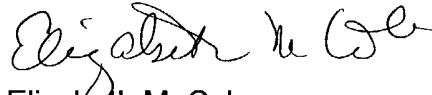
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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The fax number for all official faxes is (703) 872-9306.

A handwritten signature in black ink, appearing to read "Elizabeth M. Cole". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c